still non-assignable. *Oliver v. Walsh,* 6 Cal. 456; *Ry. v. Maher,* 91 Ill. 312; *Linton v. Henley,* 104 Mass. 353; *Pulver v. Harris,* 52 N. Y. 73; *Morris v. McCulloch,* 83 Pa. St. 34; *McArthur & G. B. & M. C. Co.,* 34 Wis. 139. See also *Comegys v. Vasse,* 1 Pet. 212.

SPECIFIC PERFORMANCE—VENDOR AND PURCHASER—MISTAKE.—VAN PRAAGH V. EVERIDGE (1902), 2 CH. 266 (ENG.).—Defendant, a bidder at an auction through his own carelessness purchased real estate that he had not intended to buy. He repudiated the bargain at once and refused to sign the memorandum of sale. Accordingly the auctioneer signed the memorandum as defendant's agent. *Held,* that the defendant could not escape specific performance on the ground of mistake.

Justice Kekewich has relied upon a *dictum* which holds that if a purchaser makes a careless mistake without reasonable excuse, he should be held to his bargain. *Tamplin v. James* (1880), 15 Ch. 215. But this can hardly be considered in point as it was decided on a different set of facts. The better rule seems to be that the defendant might be liable in damages, but that specific performance of a contract he never intended to make cannot be enforced. *Malins v. Freeman,* 2 Keen 25. The contract is nullified where there is no *consensus ad idem. Raffles v. Wichelhaus* (1864), 2 H. & C. 906. Nor will the law assist the plaintiff to take advantage of the defendant when the latter points out his mistake as soon as possible. *Webster v. Cecil* (1861), 30 Beav. 62.

STREET RAILROADS—NEGLIGENCE—DUTY TO LOOK.—BEERMAN V. UNION R. CO., 52 ATL. 1090 (R. I.).—Plaintiff drove from a cross street to the track of an electric railway without seeing an approaching car. The motorman failed to ring the bell and the plaintiff was injured. *Held,* that he was guilty of contributory negligence and could not recover, not having looked before crossing.

The decision maintains that the rule requiring a man to look and listen before crossing a steam railway is equally applicable to an electric railway. This has been affirmed in *McGee v. Ry. Co.* 102 Mich. 107, and also substantially in *Carson v. Ry. Co.,* 147 Pa. St. 219; *Moore v. Ry. Co.,* 108 Pa. St. 349; and *Ward v Ry. Co.,* 63 Hun 624.

SUBTERRANEAN WATERS—RIGHTS OF LANDOWNER—REASONABLE USE—SALE OF WATER.—KATZ ET AL. V. WALKINSHAW, 70 PAC. 663 (CAL.).—Defendant by means of a well on her own land diverted percolating water from plaintiff's land to sell for distant irrigation. *Held,* that such diversion was an unreasonable use and could be enjoined.

The court held that the case could not be decided by either of the maxims, *Cujus est solum ejus est usque ad inferos,* or *Sic utere tuo ut alienum non laedas,*—inconsistent principles which have been followed both as to surface water; XII *Yale Law Journal,* 40; and to percolating water. *Gould v. Eaton,* 111 Cal. 639; *Smith v. City of Brooklyn,* 160 N. Y. 357. A reasonable use was held the criterion as to the division of surface water in *City of Franklin v. Durgee,* (N. H.) 51 Atl. 911; and of percolating water in *Basset v. Manufacturing Co.,* 43 N. H. 569. This principle is commendable as a compromise between the extreme doctrines of the maxims.